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RANDALL CRANE

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

In re:

H. TIM HOFFMAN,

Debtor.

PAUL J. MANSDORF, Trustee in
Bankruptcy of the Estate of H. TIM
HOFFMAN,

Plaintiff,

v.

RANDALL CRANE, individually and
doing business as THE LAW OFFICES OF
RANDALL CRANE,

Defendants.

Case No. 15-40463-CN
Chapter 7

Adv. Pro. No. 15-04111

Date: January 4, 2016

Time: 11:00 a.m.

Courtroom: 215

**REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF DEFENDANT'S MOTION TO DISMISS COMPLAINT**

1 Reserving all rights and remedies, Defendant RANDALL CRANE, individually and doing
2 business as THE LAW OFFICES OF RANDALL CRANE (“Crane”), submits this Reply
3 Memorandum of Points and Authorities in further support of his Federal Rule of Civil Procedure
4 (“FRCP”) 12(b)(6)¹ motion to dismiss the Complaint for Legal Malpractice and to Forfeit/Recoup
5 Compensation (“Complaint”) filed by Plaintiff PAUL J. MANSDORF, Trustee in Bankruptcy of the
6 Estate of H. TIM HOFFMAN (“Trustee”) in the above-captioned Adversary Proceeding No. 15-
7 04111.

8 **1. Liberal Standards of Notice Pleading Do not Excuse the Requirement of Pleading**
9 **Facts to Support Each Element of a Claim for Relief**

10 The Trustee cites Judge Morgan’s decision in *Connolly v. Pillsbury Winthrop Shaw Pittman*
11 *LLP (In re SONICblue Inc.)*, 2008 Bankr. LEXIS 4440, *22-24 (Bankr. N.D. 2008) for the
12 generalization that ... [N]otice pleading only requires a plaintiff to allege claims for relief, not causes
13 of action, statutes or legal theories. (citing *Alvarez v. Hill*, 518 F.3d 1152, 1157 (9th Cir. 2008).” Id., at
14 22-24. And while that is a true statement, Judge Morgan was dealing with a claim that Pillsbury
15 Winthrop Shaw Pittman LLP (“PWSP”) willfully and consciously concealed a wide variety of
16 connections and conflicts that should have been disclosed pursuant to Bankruptcy Rule 2014. PWSP
17 moved to dismiss that claim for relief on the ground there was no private right of action for damages
18 resulting from the failure to make required Rule 2014 disclosures. In denying PWSP’s motion, the
19 bankruptcy court found while the complaint was couched in terms of "damages," the first claim for
20 relief in fact sought sanctions for bad faith conduct based on PWSP's deliberate effort to advance its
21 own economic interest in representing SONICblue by willfully concealing the firm's conflicts of
22 interest.

23 In contrast, the Trustee has sued Crane for legal malpractice, a claim arising under California
24 law. And while a complaint need not identify the statutory or constitutional source of the claim raised
25 in order to survive a motion to dismiss (*Alvarez v. Hill*, Id., at, 1157-1158), it must allege each of the
26 required elements of the claim. (See generally, *Miller v. Ceres Unified Sch. Dist.*, 2015 U.S. Dist.
27 LEXIS 146451 (E.D. Cal. 2015); *Hughey v. Drummond*, 2015 U.S. Dist. LEXIS 92708 (E.D. Cal.

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¹ Made applicable to this Adversary Proceeding by Federal Rule of Bankruptcy Procedure 7012.

2015); *Avnieli v. Residential Credit Solutions, Inc.*, 2015 U.S. Dist. LEXIS 138683, *18-19 (C.D. Cal. 2015))

In the context of a claim for legal malpractice arising from a civil proceeding, to survive a motion to dismiss the complaint must allege: “(1) the duty of the attorney to use such skill, prudence, and diligence as members of his or her profession commonly possess and exercise; (2) a breach of that duty; (3) a proximate causal connection between the breach and the resulting injury; and (4) actual loss or damage resulting from the attorney's negligence.” (citations omitted) *Leskinen v. Halsey*, 2011 U.S. Dist. LEXIS 27487, *11 (E.D. Cal. 2011) The Complaint fails to allege either a proximate causal connection between the breach of a legal duty and the resulting injury, or actual damages arising from Crane’s alleged negligence.

2. Crane’s Alleged Negligence in Causing the Chapter 11 Case to Be Dismissed Did Not Cause Any Damages to the Debtor or the Chapter 11 Estate, and Crane Owed No Legal Duty to the Individual Unsecured Creditors

The Trustee argues Crane’s negligence caused the Chapter 11 estate to lose certain avoidance rights whereby City National Bank (“CNB”) was able to maintain its secured status due to a right to attach order, and that as a result the unsecured creditors will get a smaller distribution. (Opposition Brief, p.2:8 – 11). Crane contends that result did not cause any damages to anyone to whom he owed a legal duty of care.

With respect to the Debtor, the Trustee does not argue that Crane’s alleged negligence caused any damage. The loss of the avoidance actions and CNB’s resulting secured status is not alleged to have damaged the Debtor. The Debtor did not suffer any actual damages proximately caused by the dismissal of the Chapter 11 case.

Regarding the Chapter 11 estate, Crane’s alleged negligence reallocated the Debtor’s non-exempt assets among the secured and unsecured creditors. It did not cause the Chapter 11 estate any damages. The Trustee doesn’t like the “no harm, no foul” defense. But legal malpractice claims require *both* actual damages and a causal connection between the negligent act and those damages. “[M]ere breach of a professional duty, causing only nominal damages” does not suffice. *Budd v. Nixen* (1971) 6 Cal. 3d 195, *Wolfstein v. Morgan, Lewis & Bockius LLP* (2015) 2015 U.S. Dist. LEXIS 143927 (C.D. Cal.) The Chapter 11 estate did not suffer any actual damages proximately caused by the

1 dismissal of the Chapter 11 case.

2 And finally, as to the unsecured creditors, while an attorney for a debtor in possession is a
3 fiduciary of the bankruptcy estate, those fiduciary duties to the estate do not extend to any particular
4 creditor in a chapter 11 case. *In re Count Liberty, LLC*, 370 B.R. 259, 262 (Bankr. C.D. Cal. 2007) An
5 individual creditor cannot therefore sue the chapter 11 debtor's attorney for legal malpractice because
6 there is no professional duty of care owed. The Trustee cites no case law to the contrary. To the extent
7 the Complaint alleges otherwise (Complaint, p.3:1 – 3) it is wrong as a matter of law.

8 **3. The Complaint Fails to Allege Any Facts to Support a Preference Case against**
9 **CNB or a Successful Chapter 11 Case**

10 The Trustee's Opposition does not address Crane's contention the Trustee must plead and
11 prove there would have been a successful outcome in both the preference case against CNB and the
12 Chapter 11 to prevail on the legal malpractice claim, because the method for proving the element of
13 causation has been likened to a "trial within a trial" or a "case within a case." (See, *Viner v. Sweet*
14 (2003) 30 Cal.4th 1232, 1240, fn. 4; *Ambriz v. Kelegian* (2007) 146 Cal. App. 4th 1519) It is not
15 enough to throw in conclusory allegations there was a loss of avoidance actions, or the Chapter 11 was
16 dismissed and *ipso facto* there were damages. The Complaint fails to allege any facts to show the
17 avoidance actions could have been successfully prosecuted and/or the Chapter 11 case would resulted
18 in a confirmed plan.

19 **4. Conclusion**

20 Reallocation of assets between secured and unsecured creditors damaged neither the Debtor
21 nor the Chapter 11 estate, and Crane owed no legal duty of care to the unsecured creditors. The
22 Trustee is not entitled to "new money" as a result of Crane's alleged negligence, because no money
23 was lost by anyone to whom Crane owed a legal duty of care.

24 Although a court should freely give leave to amend a complaint that has been dismissed. FRCP
25 15(a), a court may deny leave to amend when "the court determines that the allegation of other facts
26 consistent with the challenged pleading could not possibly cure the deficiency." *Schreiber Distrib. Co.*
27 *v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir.1986); see *Lopez v. Smith*, 203 F.3d 1122,
28 1127 (9th Cir. 2000), cited in *Avnieli v. Residential Credit Solutions, Inc.*, 2015 U.S. Dist. LEXIS

1 138683 (C.D. Cal. 2015) Such is the case here. The First Claim for Relief for legal malpractice should
2 be dismissed without leave to amend.

3 Date: December 26, 2015

/s/ Wayne A. Silver

Wayne A. Silver, attorney for Defendant
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